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EXAMINER

SHELEHEDA, JAMES R

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/043,523
Filing Date: January 11, 2002
Appellant(s): BALDUS ET AL.

Brian S. Myers
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/31/07 appealing from the Office action mailed 01/05/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,891,804	Hargrove	05-2005
6,041,051	Doshi et al.	03-2000
6,976,163	Hind et al.	12-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Hargrove (US 6,891,804 B2).

Regarding claim 1, Hargrove teaches a transponder (transmitter/receiver) with firmware (software for interfacing with physical/hardware components) which firmware comprise several overlaid layers 260-200 (fig. 2) containing several software

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components known as function modules (col. 2, lines 15-17), where a bottom layer (physical layer 200) contains the function modules which describe the functionality of the hardware components of the transponder (col. 2, lines 9-10; col. 4, lines 47-53, lines 62-64), and the function modules of the layer (presentation layer 250) lying above the bottom layer jointly (the layers rely on each other for definition of functions; col. 2, lines 16-18) form an application interface which can process an application software of various manufacturer-dependent central monitoring systems (col. 2, lines 31-35; in which the presentation layer inherently provides the standard interface for heterogeneous systems, e.g., application programs from software companies, or the application layer 260 to communicate with lower layers of the of the component; furthermore the applications/application layer is the central monitoring software for the various transactions that occur below it, e.g., file transfers and inter host control/access is enabled by the application layer 260; col. 2, lines 34-39) [Hargrove teaches the presentation layer 250-fig.2 is above the bottom/physical layer 200 and provides an interface for the application interface-layer 260 which can process central monitoring system application software (an application/process that uses the application layer to interface through to the physical layer to access hardware is a central monitoring system application because the application layer is the main/central interface from which the application can systematically track, i.e., monitor, information related to the hardware and/or physical layers of the system/network; col. 2, lines 34-39) inherently provided by different software manufacturers (col. 1, lines 67-col. 2, line 7; col. 2, lines 32-33,37-39; in which diverse manufacturers of software have to make drivers for

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diverse Operating systems, e.g., Microsoft, Unix, Apple, etc., and BIOSs in order to provide an "open" interconnection standard so that heterogeneous systems may access the manufacturer specific hardware/network components of the system via the systems specific BIOS/firmware)], and hence the same transponder can be used in different monitoring systems with different protocols (col. 4, lines 41-46; col. 4, lines 64-67) and management purposes (col. 5, lines 29-41 & col. 6, lines 6-16; in which the components can be used to manage gigabit Ethernet, fibre channels, RAIDS, etc.).

Regarding claim 3, Hargrove teaches the function modules of the layer lying over the bottom layer are provided for access to the other function modules of the same layer and the bottom layer (col. 2, lines 15-18; in which higher layers, i.e., the presentation layer 250, uses its protocols and functions to further access/transact with the lower level protocols down to the physical layer via the stacking/layering method as disclosed).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove (US 6,891,804 B2) in view of Doshi et al. (US 6,041,051):

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Regarding claim 2, Hargrove teaches a network element belonging to the transponder is a network element of a fiber channel network with Gigabit Ethernet/IEEE 802.3 standard compatibility (col. 5, lines 30-42; col. 3, lines 9-10), however fails to specifically disclose a HFC network.

In an analogous art Doshi teaches a HFC network for communication between a headend transmission network and LAN using the IEEE 802,3 standard (col. 5, lines 31-44; col. 6, lines 18-20).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Hargrove to include a HFC network as taught by Doshi for the advantage of providing a reduced cost headend system that integrates the LAN and transmission sides of the network (Doshi - col. 5, lines 29-32; Hargrove- col. 5, lines 39-42).

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove (US 6,891,804 B2) in view of Hind et al. (US 6,976,163 B1).

Regarding claim 4, Hargrove teaches the upper layer (application layer 260) is provided for access by a supplier (system user/host).of the central monitoring system (col. 2, lines 34-39) and for the downloading (transfer) of new application programs by the supplier of the central monitoring system (col. 2, lines 35-36), and in that the bottom layer and the layer lying over the bottom layer are provided for access (col. 2, lines 31-33 & col. 4, lines 47-54, lines 57-67). However, Hargrove fails to teach access/downloading of function modules by the transponder manufacturer.

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In an analogous art Hind teaches access/downloading of function modules (firmware updates) by the device manufacturer, e.g., to fix Ethernet adaptor/transponder hardware issues in a flexible and cost effective manner (col. 15, lines 1-8; col. 14, lines 58-21; col. 15, lines 10-16).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Hargrove to include access/downloading of function modules by the transponder manufacturer as taught by Hind for the added advantages reducing enterprise customer cost and enabling authorized manufactures to provide updated firmware/patches (Hind -col. 14, lines 58-61; col. 15, lines 12-16).

Regarding claim 5, Hargrove in view of Hind teach the hardware forming the basis of the transponder is intended for exchange while the layer lying over the lower layer and the upper layer can remain unchanged (col. 4, lines 47-54; in which the lower layer enables the exchanging of hardware without making changes to any of the layers above).

(10) Response to Argument

On pages 5-6, appellant argues that Hargrove's presentation layer functions do not form an application layer which can process an application software.

In response, Hargrove discloses utilizing the OSI standard for network protocols (column 2, lines 8-13). This protocol specifically provides a plurality of layers, from lowest to highest, wherein each layer is defined by the functions it relies upon from the

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next lower level and by the services it provides to the layer above (column 2, lines 8-18).

As indicated in the previous action, the presentation layer (which is above the bottom layer, as seen in Fig. 2 illustrating the basic OSI protocol layout) provides transformations of data encodings so that *heterogeneous systems* may engage in meaningful communications (column 2, lines 31-33). These *heterogeneous systems* consist of different machines running diverse operating systems (i.e. various manufacturer dependent system applications) (column 1, line 65-column 2, lines 7).

The presentation layer handles the function of transforming the data encodings for the applications requesting communication by monitoring and receiving services provided by the layer below it (column 2, lines 15-33). As all of the data is passed through this presentation layer to be correctly communicated to the requesting applications (see the basic OSI model of Fig. 2) the presentation layer receives and responds to central monitoring system functions, for the data to be communicated, as it is responding to application requests for data from the lower layers which would be monitored and received. Appellant's suggestion that the system would not provide for "central monitoring systems" are incorrect, as the applications are requesting and receiving specific data from the lower layers services. If this association were not present, there would simply be random processes running with the upper layers not receiving the actual desired data. If a communication is desired for some particular data, a lower layer service for providing that specific data would be monitored to perform the desired function.

Thus, appellant's arguments are not convincing, as the OSI model provides for the broad claim language "application interface which can process an application software of various manufacturer dependent central monitoring systems" which describes the basic functionality of the OSI standards.

On page 6, appellant argues that there is no support in Hargrove nor is any section of Hargrove cited for function modules at the application interface layer which can process an application software of various manufacturer dependent central monitoring systems.

In response, as indicated and cited previously, Hargrove clearly provides, utilizing the OSI standards, wherein the presentation layer (which is above the bottom layer, as seen in Fig. 2 illustrating the basic OSI protocol layout) provides transformations of data encodings so that *heterogeneous systems* may engage in meaningful communications (column 2, lines 31-33). These *heterogeneous systems* consist of different machines running diverse operating systems (various manufacturer dependent system applications, such as Microsoft, Unix, Linux, etc..) (column 1, line 65-column 2, lines 7). As the presentation layer handles the function of transforming the data encodings for the applications requesting communication by monitoring and receiving services provided by the layer below it (column 2, lines 15-33). As all of the data is passed through this presentation layer to be correctly communicated to the requesting applications (see the basic OSI model of Fig. 2) the presentation layer receives and responds to *central monitoring system* functions, for the data to be

communicated, as it is responding to application requests for data from the lower layers which would be monitored and received.

Thus, appellant's arguments are not convincing, as Hargrove utilizing the OSI model clearly provides for function modules at the application interface layer which can process an application software of various manufacturer dependent central monitoring systems.

Appellant's assertions that these features are not contained within Hargrove and consist of "missing descriptive matter" are incorrect, as these features are clearly contained within and described by Hargrove as a basic functionality of utilizing the OSI standard.

In response to appellant's arguments on pages 7-8, regarding claim 3, Hargrove teaches the function modules of the layer lying over the bottom layer are provided for access to the other function modules of the same layer and the bottom layer (col. 2, lines 15-18; in which higher layers, i.e., the presentation layer 250, uses its protocols and functions to further access/transact with the lower level protocols down to the physical layer via the stacking/layering method as disclosed). For the presentation layer, this could involve transforming data encodings for different formats, which are provided by a plurality of function modules within the layer. Thus, appellant's arguments are not convincing.

In response to appellant's arguments on page 8, regarding claim 2, please see the arguments above regarding the rejection of claim 1.

In response to appellant's arguments on pages 8-9, regarding claim 4, Hargrove specifically discloses wherein the upper layer (application layer) provides for access by a supplier (allowing the hosts to run specific applications and transfer files; column 2, lines 34-39) and further provides for downloading of new application programs (transfer files from hosts; column 2, lines 34-39). Finally, Hargrove discloses that the bottom layer and layer lying over the bottom layer are provided for access (as both the physical layer and presentation layer are utilized in the process of communicating data files from the system; see column 2, lines 31-33 and column 4, lines 47-53).

Hargrove fails to teach access/downloading of function modules by the transponder manufacturer. Hind provides for access/downloading of function modules (firmware updates) by the device manufacturer, e.g., to fix Ethernet adaptor/transponder hardware issues in a flexible and cost effective manner (col. 15, lines 1-8; col. 14, lines 58-21; col. 15, lines 10-16).

Thus, it is the combination of Hargrove and Hind which discloses that the bottom layer and layer lying over the bottom layer are provided for access (as taught by Hargrove for accessing and transferring data files) for access/downloading of function modules by the transponder manufacturer (as taught by Hind to allow for updates to correct hardware issues).

Therefore, appellant's arguments are not convincing.

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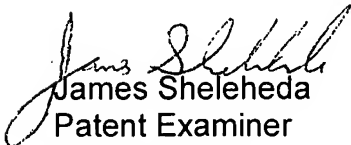
In response to appellant's arguments on page 9, regarding claim 5, please see the arguments above regarding the rejection of claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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